

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

D'armonde Kethon Demmons,)	
)	C/A No. 9:10-0322-MBS
Plaintiff,)	
)	
vs.)	
)	ORDE
Sargent Rosemary Sanders and)	
Captain Cliff McElvogue,)	
)	
Defendants.)	
)	

At the time of the underlying events, Plaintiff D'armonde Kethon Demmons was detained at the Berkeley County Detention Center (BCDC) in Moncks Corner, South Carolina. Plaintiff, proceeding pro se, filed a complaint on February 11, 2010, alleging unconstitutional conditions of confinement. Plaintiff brings this action pursuant to 42 U.S.C. § 1983.

This matter is before the court on motion for summary judgment filed by Defendants on December 15, 2010. On December 21, 2010, an order was issued pursuant to Roseboro v. Garrison, 528 F.2d 309 (4th Cir. 1975), advising Plaintiff of the summary judgment procedures and the possible consequences of failing to respond adequately.¹

In accordance with 28 U.S.C. § 636(b) and Local Rule 73.02, D.S.C., the within action was referred to United States Magistrate Judge Bristow Marchant for pretrial handling. On February 2, 2011, the Magistrate Judge issued a Report and Recommendation in which he recommended that Defendants' motion be granted to the extent that Defendants argue the complaint should be

¹ Plaintiff's copy of the Roseboro order was sent to his last known address at BCDC. The envelope containing Plaintiff's copy of the Roseboro order was returned to the Clerk's Office marked "NOT HERE - RETURN TO SENDER - REFUSED - UNABLE TO FORWARD" on February 23, 2011, subsequent to the Magistrate Judge's issuance of a Report and Recommendation.

dismissed, without prejudice, for failure of Plaintiff to exhaust his administrative remedies. See 42 U.S.C. § 1997e(a). Plaintiff has filed no objections to the Report and Recommendation.²

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility for making a final determination remains with this court. Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of any portions of the Report and Recommendation to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the Magistrate Judge or may recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must “only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.” Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310, 315 (4th Cir. 2005).

The court has carefully reviewed the record. The court adopts the Report and Recommendation and incorporates it herein by reference. For the reasons stated hereinabove and in the Report and Recommendation, Defendants’ motion for summary judgment (ECF No. 17) is **granted** to the extent that Defendants contend Plaintiff has failed to exhaust his administrative

² Plaintiff’s copy of the Report and Recommendation was sent to his last known address at BCDC. On February 9, 2011, the envelope containing Plaintiff’s copy of the Report and Recommendation was returned to the Office of the Clerk of Court marked “GONE - RETURN TO SENDER - REFUSED - UNABLE TO FORWARD.” On February 11, 2011, a copy of the Report and Recommendation was sent to Plaintiff at Post Office Box 245, Pineville, South Carolina. The Report and Recommendation that was forwarded to Plaintiff in Pineville, South Carolina, has not been returned to the Clerk’s Office.

remedies. The complaint is dismissed, without prejudice.

IT IS SO ORDERED.

/s/ Margaret B. Seymour
United States District Judge

Columbia, South Carolina

February 28, 2011.

NOTICE OF RIGHT TO APPEAL

**Plaintiff is hereby notified of the right to appeal this order
pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.**